

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the proposed amendment) NOTICE OF PUBLIC HEARING
of ARM 24.29.1529 related to allowable) ON PROPOSED AMENDMENT
charges for prescription drugs under a)
workers' compensation claim)

TO: All Concerned Persons

1. On November 16, 2007, at 10:00 a.m., the Department of Labor and Industry (department) will hold a public hearing to be held in the first floor conference room (room 104), Walt Sullivan Building, 1327 Lockey Avenue, Helena, Montana to consider the proposed amendment of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on November 9, 2007, to advise us of the nature of the accommodation that you need. Please contact the Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, Attn: Keith Messmer, P.O. Box 8011, Helena, MT 59624-8011; telephone (406) 444-6541; fax (406) 444-3465; TDD (406) 444-5549; or e-mail kmessmer@mt.gov.

3. On September 14, 2007, the department held a public hearing to consider the proposed amendment of the above-stated rule. The Department did not receive any comments on the proposed amendment. However, the department did receive one written comment addressing a different part of the rule that was not proposed to be amended in the notice. Based on that comment, the department decided to propose additional amendments as soon as possible in order to clarify the language of the rule.

4. The rule proposed to be amended provides as follows, stricken material interlined, new material underlined:

24.29.1529 PRESCRIPTION DRUGS FEE SCHEDULE (1) and (1)(a)
remain the same.

(b) Reimbursement rates to retail pharmacies for brand-name drugs are limited to the lesser of:

(i) the price charged for the prescription drug at the time of dispensing; or
(ii) the average wholesale price (AWP), minus 10 percent, or the price charged for the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product prescription drug.

(c) Reimbursement rates to retail pharmacies for generic-name drugs are limited to the lesser of:

(i) the price charged for the prescription drug at the time of dispensing; or

(ii) the AWP, minus 25 percent, ~~or the price charged for the product at the time of dispensing, plus a dispensing fee, not to exceed \$3.00 per product prescription drug.~~

(d) and (2) remain the same.

AUTH: 39-71-203, MCA

IMP: 39-71-727, 39-71-743, MCA

REASON: There is reasonable necessity to amend ARM 24.29.1529 to clarify that the dispensing fee only applies to the designated AWP price of a drug and not to the price charged if the price charged is the lesser amount. This was the department's original intent when initially adopting this rule change. However, it has recently come to the attention of the department that the previous language proved confusing to some users of the rule. In addition, the department has received a specific request for amendment of the rule, as identified in the Notice of Amendment for MAR Notice No. 24-29-223, found elsewhere in this issue of the Montana Administrative Register. Therefore, the department is proposing the amendments in order to provide the clarification.

5. Concerned persons may present their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Keith Messmer, Bureau Chief, Workers' Compensation Regulations Bureau, Employment Relations Division, Department of Labor and Industry, P.O. Box 8011, Helena, Montana 59624-8011; by facsimile to (406) 444-3465; or by e-mail to kmessmer@mt.gov, and must be received no later than 5:00 p.m., November 23, 2007.

6. An electronic copy of this Notice of Public Hearing is available through the department's web site at <http://dli.mt.gov/events/calendar.asp>, under the Calendar of Events, Administrative Rules Hearings Section. The department strives to make the electronic copy of this Notice of Public Hearing conform to the official version of the Notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the Notice and the electronic version of the Notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's difficulties in sending an e-mail do not excuse late submission of comments.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program or areas of law the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the Department of Labor and Industry, attention: Mark

Cadwallader, 1327 Lockey Avenue, P.O. Box 1728, Helena, Montana 59624-1728, faxed to the department at (406) 444-1394, e-mailed to mcadwallader@mt.gov, or may be made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor notice requirements of 2-4-302, MCA, do not apply.

9. The department's Hearings Bureau has been designated to preside over and conduct this hearing.

/s/ MARK CADWALLADER

Mark Cadwallader
Alternate Rule Reviewer

/s/ KEITH KELLY

Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State October 15, 2007